

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

DARWIN NATHANIEL TOOF,

Plaintiff,

vs.

AMANDA SWANSON, Investigator for
Rapid City Police Department, in her
individual and official capacity;
KEVIN THOM, Sheriff, in his official
capacity; DON HENDRICK, Chief of
Police, in his official capacity; and
COUNTY OF PENNINGTON,

Defendants.

CIV. 21-5009-JLV

ORDER

Plaintiff Darwin Nathaniel Toof, a prisoner at the Pennington County Jail, filed a *pro se* civil rights action under 42 U.S.C. § 1983. (Docket 1). The court granted plaintiff leave to proceed *in forma pauperis* and dismissed the case. (Docket 5). The court concluded Mr. Toof could not bring his claims against the identified defendants for a number of reasons. *Id.* at pp. 3-5. Plaintiff appealed the court's judgment and now moves for leave to appeal *in forma pauperis*. (Dockets 7-9). The court denies the motion.

A party may proceed on appeal *in forma pauperis* automatically if pauper status was granted in the district court. Fed. R. App. P. 24(a)(3). However, automatic pauper status is revoked if "the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith[.]"

Fed. R. App. P. 24(a)(3)(A). Because plaintiff elected to file a motion for pauper status on appeal instead of proceeding automatically, the court must determine whether the appeal is taken in good faith. “Good faith in this context is judged by an objective standard and not by the subjective beliefs of the appellant.” Maddox v. Chisago Cty. Sheriff Office, No. 10-CV-2133, 2010 WL 3119393, at *2 (D. Minn. Aug. 5, 2010) (citing Coppedge v. United States, 369 U.S. 438, 444-45 (1962)). In determining whether an appeal is taken in good faith, the court must decide “whether the claims to be decided on appeal are factually or legally frivolous.” Id. (citing Coppedge, 369 U.S. at 444-45). “An appeal is frivolous, and therefore cannot be taken in good faith, ‘where it lacks an arguable basis either in law or in fact.’ ” Id. (quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989)).

The court finds plaintiff’s appeal is not taken in good faith because it is legally frivolous. The court finds plaintiff would “lack[] an arguable basis either in law or in fact” in contesting this foundational error with his case on appeal. Neitzke, 490 U.S. at 325. The court must deny plaintiff’s motion for leave to proceed in forma pauperis on appeal.

Accordingly, it is

ORDERED that plaintiff’s motion for leave to appeal *in forma pauperis* (Docket 8) is denied.

IT IS FURTHER ORDERED that plaintiff shall pay the \$505 appellate filing fee to the Clerk of the United States District Court for the District of

South Dakota or seek leave to proceed in forma pauperis in the United States Court of Appeals for the Eighth Circuit.

Dated April 14, 2021.

BY THE COURT:

/s/ *Jeffrey L. Viken*
JEFFREY L. VIKEN
UNITED STATES DISTRICT JUDGE